



# Georgia Code of Military Justice

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# Agenda



## **Introduction**

**Purpose is to Introduce  
the Reasons for Redrafting  
the Code**

**National Guard Basics**

**Why We Need a new Code**

**Examples**

**Goals**

**Conclusion**



# NATIONAL GUARD BASICS



## State Organization

Governor is commander-in-chief

The state militia

## State operational mission

Includes domestic response and law enforcement missions [32

U.S.C. §502(f)]

## Federal training mission

Funding and status for training: Title 32

**Disciplinary authority: state law**

No federal command structure

54 separate Air Forces and Armies



# NATIONAL GUARD BASICS



## Two “Hats”

### State Duty (Governor is Commander-in-Chief)

1. Under Title 32 of US Code
  1. Training for our Federal Mission
  2. Drill Weekends
  3. Annual Training
2. State Active Duty
  1. Performing service for the state
  2. “Snowpocalypse 2014”
  3. State foots the bill
3. Subject to Georgia Code of Military Justice



# NATIONAL GUARD BASICS



## Two “Hats”

Federal Duty (President is Commander-in-Chief)

1. Under Title 10 of US Code
  1. Performing our Federal Mission
  2. Any time OCONUS
  3. Deployments
2. Subject to the Uniform Code of Military Justice



# NATIONAL GUARD BASICS



	<b>STATE ACTIVE DUTY</b>	<b>TITLE 32</b>	<b>TITLE 10</b>
<b>COMMAND &amp; CONTROL</b>	Governor	Governor	President
<b>WHERE</b>	IAW State Law	CONUS	Worldwide
<b>PAY</b>	State	Federal	Federal
<b>MISSION TYPES</b>	IAW State Law (Riot control, Emergency Response, etc.)	Training, and other federally authorized.	Overseas Training & as assigned after mobilization
<b>DISCIPLINE</b>	State Military Code	State Military Code	UCMJ
<b>SUPPORT LAW ENFORCEMENT</b>	Yes	Yes	No



# THE NEED



Georgia's Code of Military Justice (GCMJ) was originally passed in 1955. With the exception of a slight change to O.C.G.A. §38-2-360 allowing for a greater fine/forfeiture, there has been little change to the document since 1955.



# THE NEED



## Contrast with the Uniform Code of Military Justice

- Originally enacted in 1951
- New Editions followed
  - 1968, 1969, 1984, 1994, 1995, 1998, 2000, 2002, 2005, 2008, and 2012
  - Also enacted “amendments”
    - 2005, 2007, 2007, 2008, 2010, 2011, 2013, and 2014
- Total of 19 times that the UCMJ has had substantive changes





# THE NEED



Examples of Fines under the current code:

- Summary Court Martial – Up to \$25.00
- Special Court Martial – Up to \$100.00
- General Court Martial – Up to \$200.00



# THE NEED



- The comparable offenses and punishments between the federal UCMJ and the newly drafted state code will provide greater predictability for members as they switch statuses.
- It will give our commanders more legitimate options to ensure a disciplined force, especially when dealing with “military offenses”.



# COMPARISON



## O.C.G.A. 38-2-372

Subject to Code Section 38-2-371, general courts martial shall have jurisdiction to try persons subject to this article for any offense for which they may be punished by this article and shall have the power to sentence a defendant to:

- (1) Fine of not more than \$200.00;
- (2) Forfeiture of pay and allowances;
- (3) A reprimand;
- (4) Dismissal or dishonorable discharge;
- (5) Reduction of a noncommissioned officer to the ranks; or
- (6) Any combination of the punishments listed in paragraphs (1) through (5) of this Code section.



# COMPARISON



## NEW O.C.G.A. 38-2-372

Subject to Code Section 38-2-371, general courts martial shall have jurisdiction to try persons subject to this article for any offense made punishable by this article, and shall, under such limitations as the Governor may prescribe, adjudge any one or more of the following punishments not otherwise forbidden by this article:

- (1) **Confinement for a period of not more than ten years;**
- (2) **Restriction to specified limits for not more than six months;**
- (3) Dismissal, dishonorable discharge, **or bad conduct discharge;**
- (4) Forfeiture of **all or a portion of** pay and allowances;
- (5) **Restitution;**
- (6) Reduction **to the lowest or any intermediate pay grade of enlisted persons;**
- (7) A reprimand; and
- (8) **No punishment.**



# EXAMPLE #1



Unit from Georgia is tasked with performing border patrols on the southwest border in Arizona (under Title 32 orders). SSG (E6) Ross Geller and SPC (E4) Rachel Green decide to cross the border one evening into Mexico for some authentic Mexican food. SSG Geller is married, but SPC Green is not. Also of note is that SSG Geller is SPC Green's squad leader.

SSG Geller buys a pitcher of margaritas for the two of them to share, despite a standing order that Soldiers on this mission are not to drink alcohol and the fact that Green is 20 years old. Eventually, SSG Geller convinces SPC Green to join him at a hotel where they both plan on having sex. Before they can, she passes out. SSG Geller proceeds to have sex with SPC Green based on her previous "consent".



# EXAMPLE #1



## Potential criminal charges against SSG Geller:

1. Rape;
2. Absence without leave (O.C.G.A. 38-2-519);
3. Failure to obey order or regulation (O.C.G.A. 38-2-525);
  1. General Order No. 1 (No alcohol);
  2. AR 600-20 (Fraternization);
  3. AR 600-20 (Sexual Assault).
4. General article (O.C.G.A. 38-2-553);
  1. "Conduct detrimental to the good order and discipline of the organized militia."
  2. Adultery

## Potential criminal charges against SPC Green:

1. Absence without leave;
2. Failure to obey order or regulation;
3. General article.



# EXAMPLE #1



1. Assume Mexico does not want to prosecute case believing that consent given prior to SPC Green passing out was sufficient.
  1. Commander would currently be limited to the following punishments:
    1. Fine of not more than \$200.00;
    2. Forfeiture of pay and allowances;
    3. A reprimand;
    4. Dismissal or dishonorable discharge;
    5. Reduction of a noncommissioned officer to the ranks; or
    6. Any combination of the punishments listed in paragraphs (1) through (5) of this Code section.
  2. Under revised code, commander could request General Court Martial, which carries sentence of up to ten years.



## EXAMPLE #2



CPT Chandler Bing, Company Commander for A Company, is shopping for his wife at Phipps Plaza. He stops for lunch in the food court when one of his Soldiers, SGT Seinfeld stops by his table. Both gentlemen are in civilian clothes and not in a duty status.

SGT Seinfeld is extremely upset that CPT Bing made a comment on his evaluation report that Seinfeld seems to be more interested in doing nothing than in accomplishing the mission. Seinfeld proceeds to yell profanities at Bing and is eventually escorted out of the mall.





# EXAMPLE #2



SGT Seinfeld could be charged with disrespect towards a superior officer (O.C.G.A. 38-2-522).

## Potential punishments under current code:

1. Traditional advice is that despite clear military nexus, **no punishment** can be administered because Seinfeld was NOT on duty at the time of the act.
2. Punishment under O.C.G.A. 38-2-360 (Non-Judicial Punishment (NJP))
  1. Actual punishment depends on rank of administering commander.
  2. Can only administer ONE punishment under current code.
  3. Likely punishment would be reduction in rank.
3. Punishment under court martial is not likely under current code due to limitations in punishments. (\$25.00 fine, no confinement)



# EXAMPLE #2



## Potential punishments under new code:

### 1. NJP

1. Can administer more than one punishment under new code
2. Allows commanders to both administer punishment NOW, AND deter future bad behavior.
  1. Example: Forfeiture of pay and reduction in rank.
  2. Commander suspends reduction in rank to provide deterrence for future bad behavior.

### 2. Summary Court Martial

1. Can provide for confinement of up to one month;
2. Forfeiture of pay and allowances for up to 60 days;
3. Reduction of two grades.



# EXAMPLE #3



SGM Joey Tribbiani is training with his unit at Fort Swampy, an active duty Army military base with exclusive federal jurisdiction. SGM Tribbiani is a doomsday prepper who, in his attempt to prepare for the coming Zombie apocalypse, decides to steal his gas mask. After the mask goes missing, the commander has a sensitive items inspection, and ultimately finds the mask in the trunk of SGM Tribbiani's car.



# EXAMPLE #3



SGM Tribbiani has committed a theft of government property, and could be charged under federal law or the GCMJ with a violation of O.C.G.A. 38-2-540.

-No state criminal law violation because post is exclusive federal jurisdiction.

-US Attorney doesn't want to prosecute due to the value of the mask being below the typical threshold for federal theft crimes.

Potential punishments under current code:

1. Punishment under O.C.G.A. 38-2-360 (Non-Judicial Punishment (NJP))
  1. No reduction in rank possible due to rank of offender.
  2. Forfeiture of one-half of one month's pay for two months.
2. Could pursue administrative separation with an Other than Honorable (OTH) discharge.



# EXAMPLE #3



## Potential punishments under new code:

1. NJP—still limited due to rank of offender
2. Summary Court Martial
  1. Can provide for confinement of up to one month;
  2. Forfeiture of pay and allowances for up to 60 days;
  3. Reduction of two grades.
3. Special Court Martial
  1. Confinement of up to one year;
  2. Forfeiture of pay and allowances for up to one year;
  3. Bad Conduct discharge



# GOALS



1. Provide commanders more (and more effective) options to dispose of cases of misconduct within ranks.
2. More closely resemble the UCMJ to provide greater continuity when going to and from Title 10 duty.
3. Provide senior leadership more administrative options.
4. Better define requirements for Judge Advocates within the state.
5. Modernize punishments to provide greater deterrent for misconduct.



# What the New Code Means for the Georgia National Guard



1. Provides an operational force with an operational legal structure
2. Enhances the National Guard's role and accessibility for homeland defense and domestic emergencies
3. Maximizes the governor's control over his or her National Guard forces when used out of state
4. Establishes more effective disciplinary tools for commanders
5. Improves due process for National Guard members
6. Facilitates Total Force Integration and interoperability with active duty forces through common disciplinary standards
7. Prepares members for Title 10 duty / UCMJ standards



DEPARTMENT OF DEFENSE  
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MAR 25 2005

The Honorable Richard B. Cheney  
President of the Senate  
United States Senate  
Washington, D.C. 20510-6250

Dear Mr. President:

On behalf of the Secretary of Defense, I am pleased to forward copies of the Department's model State Code of Military Justice and model State Manual for Courts-Martial for the National Guard When Not In Federal Service. The National Guard Bureau was tasked to develop these documents in response to a Congressional request in the Bob Stump National Defense Authorization Act for Fiscal Year 2003.

The concept for a model State Code and State Manual was recommended by a Department of Defense Panel to Study Military Justice in the National Guard When Not in Federal Service. The intended purpose of developing the model State Code and model State Manual was to provide them to the States, Territories, Puerto Rico and the District of Columbia (hereafter collectively referred to as "the States") for their consideration and potential adoption. The Department of Defense Panel found that the States' legal and administrative authorities to conduct courts-martial and non-judicial punishment varied greatly. In addition, the Panel found that a number of National Guard jurisdictions lacked modern and effective laws and procedures necessary to have a viable military justice system. The creation of a model State Code and model State Manual was seen as a way to enhance uniformity among the States. In addition, it was believed that the project should result in increased comparability of the State's military justice systems with that applicable to active duty military members. In large measure, both closely follow the organization and provisions of the Federal Uniform Code of Military Justice and Manual for Courts-Martial.

The National Guard Bureau established a working group of national guard judge advocates and senior advisors to develop these documents. The Judge Advocates General of the Departments of the Army and Air Force appointed military justice experts as advisors and consultants to the working group. If adopted by the States, among the benefits would be: (1) uniformity; (2) enhanced military discipline; (3) closer conformity with the Federal Uniform Code of Military Justice; (4) strengthened military justice training; (5) elimination of inter-state jurisdictional issues; (6) a useful commander's tool to further mission accomplishment; (6) a step forward in the National Guard's vision of being Ready, Reliable, and Relevant; and (7) increased credibility with the active duty components and public.

The proposed implementation plan is multi-faceted. Because the process to achieve the States' adoption will invariably be lengthy, familiarity and support for these models is needed in key national and state organizations. These organizations include the Commissioners on







Uniform State Laws, the National Governor's Association, the National Center for State Courts, the National Sheriff's Association, the Adjutant General Associations, the Attorney General Associations, and the National Counsel of State Legislatures. However, the National Guard Bureau believes that successful implementation primarily rests on the shoulders of the Adjutants General of the States and Territories, as they are in the best position to demonstrate the value of the proposals to the Governors, State Attorneys General, and State legislators. Army and Air Force National Guard senior judge advocates, working with their active duty counterparts, would be able to provide the additional expertise necessary. In addition, key members of the National Guard Bureau's working group would be made available to provide testimony, briefings, and presentations to the Congress and State legislatures, as appropriate.

The Department of Defense supports the adoption of the model State Code, the model State Manual, and the implementation plan that the National Guard Bureau has provided. This office is available to assist wherever needed.

Sincerely

A handwritten signature in black ink that reads "D J Dell'Orto". The signature is written in a cursive style.

Daniel J. Dell'Orto  
Principal Deputy General Counsel



# SENTENCES



- **Use UCMJ Table of Punishments except:**
  - **Maximum 10 years Confinement**
  - **No Death Penalty**



# APPEALS



- **No automatic Appeal**
- **Permissive Appeal**
- **Use State Appellate Court Procedures.**



# Questions?